Law Day 2017
The 14th Amendment, Transforming American Democracy

Location: San Diego Law Library, 1105 Front Street, San Diego, CA 92101
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- An overview of the major provisions of the 14th Amendment to the United States Constitution and ways that the 14th Amendment has reshaped American law and society.

- Over the years Congress has passed statutes to enforce the rights enumerated in the 14th Amendment, including Title 42 of the U.S. Code, 42 U.S.C. §1983 (any person who under color of law subjects another person to the deprivation of rights, privileges or immunities secured by the Constitution); Title IV of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of sex in public schools and colleges); Title VI (which prohibits discrimination on the basis of race, color or national origin in a program or activity which receives federal financial assistance); Title VII (which prohibits employment discrimination based on race, color, religion, sex and national origin); and Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex by recipients of federal funds). An objective of these laws is to enforce the 14th Amendment.

- Recent cases in the United States District Court, Southern District of Calif.:

(A) *Tyler and Ragazzino v. City of San Diego and Robert Filner*, USDC, Southern District of California. Causes of action claimed by the plaintiff nurse and wounded warrior: 1) battery, 2) California Civil Code §51.9, sexual harassment in a business, service or professional relationship, and 3) 42 U.S.C. §1983, sexual discrimination because males did not have to date or have sexual relations with the mayor to get city veteran services.

(B) *Ramser v. University of San Diego, et al*, USDC, Southern District of California. Causes of action against the school: violation of Title IX, 20 U.S.C. §1681. Plaintiff claims the school violated Title IX based upon her gender by depriving her of an equal opportunity to finish her education at USD by its deliberately indifferent or clearly unreasonable response to her claim that she was drugged, strangled and sexually assaulted by another student.

- Advocating for equal justice under the law and enforcing the 14th Amendment:

(A). Assess the claims

Meet with your client and, if appropriate, conduct preliminary interviews of key witnesses. Assess statute of limitations, immunities, remedies and damages.

Determine if your client has the strength to go all the way. Plaintiffs alleging discrimination may be smeared and vilified by the defendant and defense counsel. Plaintiffs alleging discrimination are often followed by investigators and watched, including on social media.

Assuming everything is in order, get a good fee agreement. Sample fee agreements are at www.calbar.ca.gov.

From the start, keep contemporaneous time records of your work. Also, get a jury instruction for each cause of action and develop a game plan. What evidence do I need to meet each element? How will I obtain that evidence?

(B). Demand letter

Get a demand letter out and file a claim with the Office for Civil Rights in your geographical area, if applicable.

Even if liability is clear, do *not* assume the defendant will settle.

(C). Draft and file a complaint

Jurisdiction, venue, pros and cons of filing in State versus Federal court. Once you file the complaint, be read to move rapidly and efficiently on your case because civil rights claims are often fact intensive, may require substantial discovery, and the discovery period may be less than what you want, expect or need. Include more, rather than less, in the complaint because you may not have time to amend. *Think of it as a marathon and be ready to run fast and efficiently.*

(D). Discovery

Before the CMC, which starts discovery in Federal Court, prepare your paper discovery. Utilize as many forms of discovery as appropriate: document requests, interrogatories, requests for admissions, depositions, and third-party subpoenas. Get it right the first time because, again, discovery may move fast.

In general, expect the other side to obstruct, even though that is improper. It will likely cost you a lot of time and therefore money to get adequate discovery.

Depositions: Federal Court, limited to ten per side. State, unlimited, but the Court can reign you in. Due to short discovery periods in some Federal Courts, you may not want to wait for the paper discovery responses before you start taking

depositions.

(E). Settlement and or trial

Plaintiffs should be prepared for the Court and mediators to take a stance which devalues attorney fees at mediation, despite laws permitting attorney fees for these types of cases.

As mentioned, throughout the case, the lawyer should be preparing for trial. The lawyer will most likely need another lawyer to assist at trial. A best practice is to not wait until the last minute to have another lawyer on board to help you.

(F). Shift in consciousness

Legal aid is more important than ever for people with substantially limited financial resources, particularly in the rural parts of our country. One legal problem can isolate a person from housing, a job, health care and safety. We as a community do *not* want a legal system that is only for the wealthy. I believe that if we individually change our consciousness, we can shift the consciousness of the legal community.

The following are a few ways that the legal community may consider to shift its consciousness so that the justice system is more receptive to claims based upon the 14th Amendment and advocates for social justice:
(1) unreasonably short discovery periods often hurt financially poor plaintiffs because short discovery periods do not permit sufficient time to gather evidence, and (2) devaluing plaintiff attorney fees is a disincentive for attorneys who want to advocate for equal justice under the law. If Courts and mediators encourage enforcement of plaintiff attorney fee provisions, word will spread in the legal community, and before discovery begins, defendants will be in a position to correctly price their risks.

Lawyers who take on cases that enforce rights provided by the 14th Amendment are often providing a form of legal aid, so we should try to not throw unnecessary roadblocks in the way of advocates for equal justice.

(G). Best of luck in the amazing process of using the 14th Amendment to shape our law and society!

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